

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendant
Facebook, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SIX4THREE, LLC,

Plaintiff,

v.

FACEBOOK, INC., and MEDIA TEMPLE, INC.,

Defendants.

Case No. 4:16-cv-06716-PJH

**DECLARATION OF LAURA E. MILLER IN
SUPPORT OF DEFENDANT FACEBOOK,
INC.'S MOTION TO DISMISS**

Date: March 8, 2017

Time: 9:00 am

Ctrm: 3, 3rd Floor

Judge: Honorable Phyllis J. Hamilton

1 I, Laura E. Miller, declare as follows:

2 1. I am an attorney at law licensed to practice in the state of California. I am an attorney
3 with the law firm of Durie Tangri LLP, counsel for Defendant Facebook, Inc. ("Facebook") in this
4 matter. I make this Declaration from personal knowledge, and if called to testify, I could and would
5 testify competently thereto.

6 2. Six4Three LLC ("Six4Three") first filed suit against Facebook San Mateo Superior Court
7 on April 10, 2015.

8 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Second Amended Complaint
9 of Plaintiff, Six4Three, LLC, Case No. CIV 533328, Super. Ct. (San Mateo), filed February 26, 2016.

10 4. Attached hereto as **Exhibit 2** is a true and correct copy of the article "Introducing
11 'Pikinis,' an iPhone App in Beta That Lets You Detect Swimsuit Photos of Facebook Friends," published
12 online by BroBible on April 23, 2013.

13 5. Attached hereto as **Exhibit 3** is a true and correct copy of "The New Facebook Login and
14 Graph API 2.0," published online by Facebook's Developer News on April 30, 2014.

15 6. On January 13, 2016, I took the deposition of Ted Kramer, who identified himself as the
16 Managing Director of Six4Three and the sole member. During the deposition, I questioned Mr. Kramer
17 regarding the creation, maintenance, and control of the website with the URL
18 facebookappeconomy.com. Mr. Kramer's deposition testimony has been designated as highly
19 confidential under the protective order in the litigation pending in the Superior Court of San Mateo.

20 7. Attached hereto as **Exhibit 4** is a true and correct copy of a screen shot of
21 www.facebookappeconomy.com taken on November 21, 2016 at 3:16 pm PST.

22 8. Attached hereto as **Exhibit 5** is a true and correct copy of email correspondence between
23 counsel for Plaintiff Six4Three, LLC and myself, dated December 2, 2016. The "Sad Panda" link was
24 the first time that Facebook had access to the Site as it exists today. As the threats contained in this email
25 did not go to the merits of the San Mateo Superior Court litigation, Facebook did not respond to them.

26 9. I visited the Site on December 15, 2016 and confirmed that it had been transformed from
27 the Infringing Site to the so-called "gripe site," as described in Six4Three's Complaint and Amended
28 Complaint.

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2017 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Laura E. Miller

LAURA E. MILLER